

REMARKS

This submission is in response to the Office Action dated March 27, 2003.

Reconsideration of the above identified application, in view of the above amendments and the following remarks, is respectfully requested.

Claims 2-36 and 38-46 are currently pending with claims 1 and 37 having been canceled without prejudice in the current amendment.

Applicant appreciates the careful consideration and favorable treatment of the claims in which claims 7-17, 19-36 and 41-46 were indicated as being allowable.

Claims 1-6, 18 and 37-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/06292. This reference is published to the present assignee and describes a method and apparatus for efficient hemodiafiltration. The apparatus includes a first dialyzer cartridge and a second dialyzer cartridge where fluid discharged from the first dialyzer cartridge is mixed with substitution fluid before entering the second dialyzer cartridge. Hemodiafiltration occurs in both cartridges.

In rejecting the above claims, the Examiner states that the apparatus of the cited reference includes a control unit that is responsive to flow rate of the first fluid via a flow meter (10) and a flow rate of blood via a flow meter (26) to control a substitution pump.

Applicants respectfully traverse this rejection on the following grounds. While member 10 is a flow meter, its location and operation is not the same as the feature disclosed in the

amended claim 1. Claim 1 has been amended to recite a system where a control unit is present and is responsive to a first detected characteristic of one of the first fluid and the dialysate fluid, both of which flow within the first conduit which is defined as being connected at one end to the dialysis machine and at the other end to a dialyzer. The claimed first detected characteristic is a flow rate of one of the fluids that flows within the first conduit that extends between the dialysis machine and the dialyzer.

In the cited reference, the flow meter 10 is placed in a conduit that receives fresh dialysate fluid and delivers it to sterilizing filters which filter the fluid for use as a substitution fluid that is introduced between the dialyzer cartridges. In other words, the flow meter 10 is disposed in the conduit that is described as the “second conduit” in claim 1 as opposed to being in the “first conduit” that is recited in claim 1. Applicants therefore respectfully submit that the flow meter 10 does not serve to detect a flow rate of a fluid in the first conduit since it is positioned within a line 2 which actually functions instead as the claimed second conduit.

In sum, Applicants respectfully contend that there is no disclosure or suggestion of detecting the flow rate of a fluid (e.g., dialysate fluid) as it flows from the dialysis machine to the dialyzer. In the cited reference, the conduit that most closely operates as the claimed first conduit is the conduit 41. There is a lack of teaching or suggestion of detecting a flow rate within this conduit 41. Based on the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 2.

Claims 3-36 should be allowed as depending from what should be an allowed

independent claim 2, as amended. In addition, a number of claims contain patentable subject matter in and of themselves, as already indicated by the Examiner.

Claim 37 is a method type claim and has been amended in a manner similar to the amendments to claim 2 and therefore, Applicants respectfully request that amended claim 37 be reconsidered and the rejection thereof be withdrawn for the same reasons as those described above with reference to amended claim 2.

Claims 39-46 should be allowed as depending from what should be an allowed claim 38, as amended. In addition, a number of claims contain patentable subject matter in and of themselves, as already indicated by the Examiner.

At this time, allowance of claims 2-36 and 38-46 is earnestly solicited.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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